

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

VIKING ENGINEERING COMPANY, INC.¹

Employer

and

INDIANA REGIONAL COUNCIL OF CARPENTERS

Petitioner

Case 13-RC-20187

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved claims to represent certain employees of the Employer.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and part-time employees, including general shop laborers, master rate machinists, master maintenance machinist, journeymen machinists, apprentice machinist, journeymen mechanics, apprentice mechanics, mechanical helper, master rate welders, welders, tool room attendants, CAD operator, truck drivers, and truck washer, employed by the Employer at or from its Hammond, Indiana facility, excluding estimators, clerical employees, receptionist, general accounting employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by Indiana Regional Council of Carpenters.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **November 5, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by November 12, 1999.

DATED October 29, 1999 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

- */ The National Labor Relations Board provides the following rule with respect to the posting of election notices:
- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.
 - (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
 - (c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing have been carefully considered. After briefs were filed the Petitioner submitted "Petitioner's Motion to Strike Portions of the Employer's Post Hearing Brief" asserting that the Employer had attached 8 exhibits to its brief which were not introduced at the hearing. It is clear that the 8 exhibits in question (labeled B, C, D, E, F, G, H, and I) were not introduced into evidence at the hearing. The Employer has made no motion to re-open the record for the purpose of introducing these documents pursuant to Section 102.65(e)(1) of the Board's Rules and Regulations, series 8, as amended. Rather, the Employer, in response to the Petitioner's motion to strike, filed "Employer's Motion Opposing Union's Motion to Strike Portions of the Employer's Post-Hearing Brief", contending that the documents in issue were "a matter of public record, one of the Union's own documents, or both". On October 28, 1999, the Employer filed a "Supplement to Employer's Motion Opposing Union's Motion to Strike Portions of Employer's Post-Hearing Brief". In that document the Employer asserts that the Indiana Regional Council of Carpenters (hereinafter the IRCC) does not exist and it had further evidence to submit to show such. The Employer asserts that it has photographs of the signs at the location listed on the petition as the address of the IRCC which show the names of the Northwest Indiana District Council of Carpenters, Carpenters Local Unions #1005 and #1485, Millwright Local Union #1043, and Carpenters & Millwrights Training Center on the premises rather than the name of IRCC. The Employer in its supplement asserts that it would be submitting those photographs on October 29, 1999. The supplement contains no motion to reopen the record.

Petitioner's motion to strike Exhibits B through I is granted. The evidence at issue, including the material encompassed in the Employer's supplement, was not introduced at hearing, thus does not meet basic foundation requirements. The Petitioner did not have the opportunity to examine the evidence, to explain the contents therein, give a context to the documents in question, or submit other documents or evidence that might explain or add to the documents the Employer attached to its brief. Furthermore, no explanation has been offered as to why the documents and evidence in question could not have been presented at the hearing. See, *ADCO Electric Incorporated*, 307 NLRB 1113, fn. 1 (1992) (while this is an unfair labor practice case, the principles set forth therein are applicable here). Finally, even, if the material submitted by the Employer were considered, it would not change the findings and conclusions reached herein.

3/ Viking Engineering Company, Inc. is an Indiana Corporation, with an office and facility located in Hammond, Indiana, which functions as a machine job shop.

4/ The Employer contends that the Indiana IRCC is not a labor organization within the meaning of Section 2 (5) of the Act. The IRCC, on the other hand, contends that it is a labor organization within the meaning of the Act.

FACTS

The IRCC came into existence as a result of the merging of the following: Northwest Indiana District Council; Northeast Indiana District Council; Central Indiana District Council; and the Southern Indiana District Council, collectively called "Council." The IRCC represents, among other classifications, the approximately 12,000 carpenters, millwrights, piledrivers, and floor layers encompassed in its territory. While the IRCC has not yet negotiated any agreements on their own, it administers the collective bargaining agreements negotiated by the former Councils, which they replaced.

All Local Unions previously affiliated with a branch of the Council, are now affiliated with the newly formed IRCC. The United Brotherhood of Carpenters and Joiners of America (International) serves as the umbrella organization over the IRCC.

The IRCC's by-laws provide for employee participation in its organization. As an example, Section 14, 15, and 16 deal with the establishment, election and requirements of delegates. Essentially, each Local Union elects a Delegate(s) from among the its employee/members in accordance with the Constitution and Laws of the United Brotherhood governing nomination and elections in subordinate

bodies. Section 4, sets forth the officers that comprise the Council. Sections 5, in turn, deals with the election of the Council officers by the Local Union delegates. Finally, Section 31 of the by-laws establishes the power within the Council to enact measures necessary to further the objectives of the Council.

The record shows that an objective of the IRCC is to represent employees for the purposes of collective-bargaining over wages, rates of pay, labor disputes, grievances, conditions of work and other terms and conditions of employment. Section 2 of the IRCC by-laws sets forth objectives of the IRCC which include, *inter alia*, reducing the hours of labor, securing adequate pay for work, and elevating the standards of the carpentry craft. Section 17 of the IRCC by-laws sets forth that the IRCC “shall have the exclusive power and authority to negotiate, ratify and execute Collective Bargaining Agreements for and on behalf of its affiliated locals....” In addition, the filing of the instant petition shows the Petitioner’s intent, if certified, to represent Viking employees.

ANAYLSIS

Section 2(5) of the Act sets forth a broad definition of what constitutes a labor organization for the purposes of the Act. A labor organization, under the Act, is “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” A formal structure or organization is not an essential requisite for finding a labor organization. *Advance Industrial Security, Inc.*, 225 NLRB 151 (1976). The lack of collective bargaining history does not disqualify an entity from labor organization status. *Sweetwater Hospital Association*, 219 NLRB 803 (1975). Even the absence of a constitution, treasury, by-laws, elected officials, formal meetings, dues or other formal structures does not remove labor organization status. *Columbia Transit Corporation*, 237 NLRB 196 (1978). All that is required under Section 2(5) of the Act is that the organization, regardless of how formal or informal, (1) involve employee participation and (2) that one of its purposes is to deal with employers concerning, *inter alia*, grievances, labor disputes, wages, and terms and conditions of employment. *Advance Industrial Security, Inc.*, *supra*; *Butler Mfg. Co.*, 167 NLRB 308 (1967); and *Stewart Warner Corp.*, 123 NLRB 447.

Based upon the record, I find that the IRCC fulfills the two-prong test of Section 2(5). First, it is clear that the IRCC fulfills the “employee participation” prong of the labor organization status requirement of Section 2(5). Employees are able to hold office in the IRCC, and by so doing, “participate” in the central governing body over the affiliated Local Unions. Specifically, Section 14 of the by-laws sets forth the procedure in which Local Unions select employees to represent them as delegates on the IRCC. (Sections 15 and 16 deal with the credential, and meeting requirements, respectively, for delegates.) Section 4 establishes the term and offices of the Council. And Section 5 promulgates the manner in which nominations and elections of officers are administered. Thus, the employee participation prong of Section 2(5) is clearly met by looking at provisions in the by-laws that affirmatively calls for employee participation on the IRCC.

The IRCC satisfies the second prong of Section 2(5). The IRCC currently administers the collective bargaining agreements negotiated by the former district councils which it absorbed. It is also clear from the record that it intends to bargain with employers concerning grievances, labor disputes, wages, rates of pay, and other conditions of work, and is specifically granted the power to do so in its by-laws. Further, by filing the instant petition, the IRCC demonstrate an intent, if elected and certified, to represent individuals working for the Employer. More is not necessary. Accordingly, I find that the IRCC is a labor organization under Section 2(5) of the Act.

The Employer’s reliance on *Harrah’s Marina Hotel & Casino*, 267 NLRB 1007 (1983) and *Iowa Packing Co.*, 125 NLRB 1408 (1959) is misplaced as both of those cases involve significantly different circumstances than found herein and are factually distinguishable. In *Harrah’s*, the Board, agreeing with the Regional Director’s decision, found that the involved organization was not a labor organization within the meaning of the Act, as it failed to establish that it existed, in whole or in part, for the purposes defined

in Section 2(5) of the Act or that employees participated in it to any significant extent. In *Iowa Packing Co.*, supra, the Board found that the National Brotherhood of Engineers, Firemen & Power Equipment Operators (NBE) was not a labor organization within the meaning of the Act as it did not exist for the purposes defined in Section 2(5) of the Act because the record showed it was fronting for another organization, the National Brotherhood of Packinghouse Workers (NBPW). Accordingly, the Board found that, although NBE had a constitution, by-laws, and members, it was not an independent, autonomous organization devoted to the representation of powerhouse employees. Herein, the the record clearly establishes employee participation in the IRCC and that the IRCC exists, in whole or in part, to bargain with employers over terms and conditions and employment, and, unlike the Petitioner in *Iowa Packing*, there is no evidence that the IRCC is “fronting” for another Union. The record shows that the IRCC is autonomous and independent from the District Councils that made it up, evinced by the fact that the Councils dissolved into the IRCC.

4/ At the conclusion of the hearing, the Petitioner amended its petition to reflect the parties agreement as to the appropriate unit herein. The amendment to the petition was based upon the classifications listed in Employer’s exhibit 1, as modified by the parties at the hearing, and the parties verbal agreement on the record as to the exclusions from the unit. The unit described above, which I find appropriate, is in keeping with the agreement of the parties as to the appropriate unit herein.

339-2500-0000; 347-4030-1200-0000

Viking Engineering Company, Inc.
13-RC-20187

CHIPS Form 110
revised 7/31/85

Routing: Bd. Agent (drafter)
ARD (Reviewing sup.)
ARD Secretary
CHIPS
ARD Secy. (DW file)

110 = REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION
(Includes 8(b)(7)(C) cases and Decision granting AC, UC, or UD)

Case Number 13-**RC-20187**

Employer's Name **Viking** Engineering Company, Inc.

Date of Decision **October 22, 1999**

Was issuance of decision delayed by concurrent C case? ☐ Yes ☒ No

If yes, enter Case Number 13-**Error! Reference source not found.**

Hearing closed date October 7, 1999

Unit description code:

- ☐ A = overall industrial plus any other classification
- ☐ C = craft, one or more
- ☐ D = departmental, one or more
- ☐ G = guards
- ☐ W = office, clerical, sales & other white collar workers
- ☐ P = professional and/or technical employees
- ☐ R = combination of W & P
- ☐ T = Teamsters (only when petitioner is Teamsters)
- ☐ Z = residual

Special type of election?

- ☐ 1 = Sonotone ☐ 2 = Globe ☐ 3 = Sonotone & Globe ☐ 4 = craft severance
- ☐ 5 = sever department ☐ 6 = sever other ☐ 7 = ZIA ☐ 8 = other

Drafted by Homero Tristan

Reviewing Supervisor Arly Eggertsen

Number of employees in unit xx

Date case assigned October 14, 1999

Date request for review due October XX, 1999

Date last brief timely received October 18, 1999

REQUIRED ATTACHMENTS: None entered in CHIPS computer by: _____
(operator's initials)

